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CASE NO. 88-1974

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

JOHN G. BARROW, JR.,

Petitioner,

vs.

JIM BISHOP, JR., ALACHUA COUNTY TAX COLLECTOR, and as an individual,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

ON WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT

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STATEMENT OF THE CASE

On April 1, 1985, Petitioner filed a complaint against Respondent alleging a violation of the Federal Civil Rights Act, 42 USC §1983 (R1-1-1-42). On April 24, 1985, Respondent filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a cause of action (R1-5-1).

On August 7, 1985, the District Court issued an order reassigning this case to the Honorable Wm. Terrell Hodges for final disposition, and referring all pre-trial conferences to the Honorable Harvey E. Schlesinger, United States Magistrate (R1-14-1).

On March 14, 1986, the Magistrate issued a report and recommendation of

dismissal and Rule 11 sanctions (R1-31-1-8, 10), which finds:

> Such tactics sadly deprive other plaintiffs, who have significant and just grievances from prompt access to the Court, not to mention the time expended by counsel for the Defendant who must respond to each unnecessary motion. This frustration of the judiciary, the government, and the citizens of this state should not be tolerated (R1-31-8).

On August 15, 1986, the District Court issued an order adopting the Magistrate's recommendations and referred this case to the Magistrate to conduct proceedings necessary to determine and recommend costs and attorney's fees (R1-35-1-1-8).

On September 10, 1986, Respondent submitted a motion for fees and costs with affidavit (R1-38-1). On

May 11, 1988, the District Court entered final judgment against Petitioner and, adopting the recommendation of the Magistrate, entered final judgment for Respondent in the amount of $1,397.47 (R1-46-1).

On February 9, 1989, the United States Court of Appeals, Eleventh Circuit, affirmed the judgment of the District Court, without a published opinion. See: **Barrow v. Bishop**, 868 F.2d 1274 (11th Cir. 1989). In its unpublished opinion, the Court of Appeals affirmed the finding of the District Court that Petitioner's claim was barred by the Tax Injunction Act, 28 USC §1341, holding:

> Appellant's suit is patently frivolous.

SUMMARY OF ARGUMENT

Petitioner has utilized the federal judiciary as a blunt instrument to harrass Respondent with vexatious filings of an unintelligible complaint and inappropriate motions. The record is replete with name-calling and corny epithets..

Petitioner's "contumacious conduct" before the District Court is detailed in the report and recommendation of the United States Magistrate (R1-31-1, 8, 10).

Rule 11 sanctions for significant expenditure of judicial resources in order to deal with absolutely groundless and frivolous claims are appropriate.

ARGUMENT

Unfortunately, the record on appeal and Petitioner's writ clearly demonstrate Petitioner's conduct in dealing with the Respondent and the federal judiciary. The record on appeal also demonstrates the patience of the District Court with a **pro se** litigant who has shown a clear intent to harass the various parties he has sued and the judiciary.

On April 1, 1985, Petitioner filed the instant action, **pro se**, against Respondent, individually and as Tax Collector of Alachua County, seeking damages of $10 million. Most of the complaint is incomprehensible, although it appears to claim that he is in the business of loaning money to various governmental agencies

in the State of Florida, he believes these loans have not been properly redeemed, and he demands an accounting, as well as compensatory and punitive damages (R1-1-7). Copies of a 1961 and 1963 tax certificate, sold to T.J. Alderman, are attached to the complaint as exhibits. Tax Sale Certificate No. 32 (1961) was in the amount of $122.97, and Tax Sale Certificate No. 137 (1963) was in the amount of $36.07 (R1-1-10,11).

The report and recommendation of United States Magistrate Harvey E. Schlesinger (R1-31-1,10), dated March 14, 1986, which was adopted by United States District Judge Wm. Terrell Hodges on August 15, 1986, clearly details the reasons supporting the recommendation that Petitioner pay Respondent's expenses and a reasonable attorney's fee.

This report finds Petitioner's complaint wholly inadequate, failing to approach even a semblance of intelligibility or coherency (R1-31-5). The report finds that Petitioner, through his vexatious filings of unintelligible and inappropriate motions, has shown a clear intent to harrass the various parties he has sued (R1-31-8). The report finds that the record is replete with name-calling and corny epithets.

Petitioner continues his "contumacious conduct" before this Court in his writ, referring to the "Magistrate's fraudulent allegations", the "Wheel Within A Wheel's corruption in the United States District Court and the 11th Circuit Court of Appeals", "filthy conspiracy", "Classic R.I.C.O. Gangland Scheme", "void

decisions", "With Hodges, Wahl and Tjoflat begging for more, bribes", "notorious gangland styled decisions", "Mail Order Hodges", and sanctions based "soley on the meanness and madness of Schlesinger's own Say-so."

In its unpublished opinion, the Eleventh Circuit Court of Appeals affirmed the dismissal and sanctions of the District Court, holding Petitioner is required to seek relief in the Florida Courts unless he can show that they do not provide an adequate remedy, and that Petitioner has not made such a showing. **Fair Assessment in Real Estate Ass'n. v. McNary**, 454 U.S. 100, 102 S.Ct. 177 (1981); **Williamson County Regional Planning Commission v. Hamilton Bank**, 473 U.S. 172, 194-195, 105 S.Ct. 3108, 3121 (1985),

Ayers v. Polk County, Georgia, 697 F.2d 1375 (11th Cir. 1983); **Noble v. Joint City-County Board of Tax Assessors of Fulton County**, 672 F.2d 872 (11th Cir. 1982).

Addressing Rule 11 sanctions, the Eleventh Circuit Court of Appeals held:

> Appellant's suit is patently frivolous. The district court acted well within its discretion in concluding that a Rule 11 sanction was warranted; the record is replete with evidence that appellant brought this suit purely to harrass the appellee.

Petitioner calls on this Court to exercise its "power of supervision" over the departure of the Eleventh Circuit Court of Appeals from other courts, presenting the following question for review:

> Does "A Denial" by the United States Supreme Court sanction the above described corruption?

Clearly, the writ of certiorari evidences Petitioner's contumacious conduct toward the judiciary and Respondent.

Dismissal of a frivolous complaint with Rule 11 sanctions does not depart from the accepted and usual course of judicial proceedings, nor sanction such a departure by the lower court. **Flaksa v. Little River Marine Const. Co.**, 489 F.2d 885 (5th Cir.), **cert. den.**, 392 U.S. 928 (1968). Rule 17, Revised Rules of the United States Supreme Court.

A review on writ of certiorari is not a matter of right, but of judicial discretion and will be granted only when there are special and important reasons therefor. The District Court's dismissal of a frivolous complaint with Rule 11 sanctions does not present special and important reasons for granting a writ of certiorari in this case.

CONCLUSION

The record in this case clearly supports the final judgment entered in this case. Such judgment is well documented and is consistent with the essential requirements of law.

The unpublished opinion of the Eleventh Circuit Court of Appeals affirming the judgment of the District Court is also consistent with the essential requirements of law.

Petitioner has presented no special and important reasons for granting a writ of certiorari in this case and Petitioner's writ should be denied.

Respectfully submitted this 26th day of June, 1989.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief in Opposition has been furnished to John G. Barrow, Jr., **pro se**, Route 1, Box 470, Callahan, Florida, 32011, by United States mail, this 26th day of June, 1989.

Of counsel